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OFFICE OF
INSPECTOR GENERAL

SPECIAL

FRAUD ALERT

JOINT VENTURE ARRANGEMENTS

Richard P. Kusserow
Inspector General

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Special Fraud Alert

The Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in Health and Human Services programs and to promote efficiency and economy in departmental operations. It carries out this mission through a nationwide network of audits, investigations and inspections. To help reduce fraud in the Medicare and Medicaid programs, the Office of Inspector General is actively investigating violations of the Medicare and Medicaid anti-kickback statute, 42 U.S.C. Section 1320a-7b(b). This statute is very broad. Among other things, it penalizes anyone who knowingly and willfully solicits, receives, offers or pays anything of value to induce or in return for —

(a) referring an individual to a person for the furnishing or arranging for the furnishing of any item or service payable under the Medicare or Medicaid program, or

(b) purchasing, leasing or ordering or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item payable under the Medicare or Medicaid program.

Violators are subject to criminal penalties, or exclusion from participation in the Medicare and Medicaid programs, or both.

The Office of Inspector General has become aware of a proliferation of arrangements between those in a position to refer business, such as physicians, and those providing items or services for which Medicare or Medicaid pays. Some examples of the items or services provided in these arrangements include clinical diagnostic laboratory services, durable medical equipment (DME), and other diagnostic services. Sometimes these deals are called "joint ventures." A joint venture may take a variety of forms: it may be a contractual agreement between two or more parties to cooperate in providing services, or it may involve the creation of a new legal entity by the parties, such as a limited partnership or closely held corporation, to provide such services. Of course, there may be legitimate reasons to form a joint venture, such as raising necessary investment capital. However, the Office of Inspector General believes that some of these joint ventures may violate the Medicare and Medicaid anti-kickback statute.

Under these suspect joint ventures, physicians may become investors in a newly formed joint venture entity. The investors refer their patients to this new entity, and are paid by the entity in the form of "profit distributions." These suspect joint ventures may be intended not so much to raise investment capital legitimately to start a business, but to lock up a stream of referrals from the physician investors and to compensate them indirectly for those referrals. Because physician investors can benefit financially from their referrals, unnecessary procedures and tests may be ordered or performed, resulting in unnecessary program expenditures.

The questionable features of these suspect joint ventures may be reflected in three areas:

(1) the manner in which investors are selected and retained;

(2) the nature of the business structure of the joint venture; and

(3) the financing and profit distributions.

Suspect Joint Ventures: What To Look For

To help you identify these suspect joint ventures, the following are examples of questionable features, which separately or taken together may result in a business arrangement that violates the anti-kickback statute. Please note that this is not intended as an exhaustive list, but rather gives examples of indicators of potentially unlawful activity.

Investors

- Investors are chosen because they are in a position to make referrals.
- Physicians who are expected to make a large number of referrals may be offered a greater investment opportunity in the joint venture than those anticipated to make fewer referrals.
- Physician investors may be actively encouraged to make referrals to the joint venture, and may be encouraged to divest their ownership interest if they fail to sustain an "acceptable" level of referrals.
- The joint venture tracks its sources of referrals, and distributes this information to the investors.
- Investors may be required to divest their ownership interest if they cease to practice in the service area, for example, if they move, become disabled or retire.
- Investment interests may be nontransferable.

Business Structure

- The structure of some joint ventures may be suspect. For example, one of the parties may be an ongoing entity already engaged in a particular line of business. That party may act as the reference laboratory or DME supplier for the joint venture. In some of these cases, the joint venture can be best characterized as a "shell".
- In the case of a shell laboratory joint venture, for example:
  - It conducts very little testing on the premises, even though it is Medicare certified.
  - The reference laboratory may do the vast bulk of the testing at its central processing laboratory, even though it also serves as the "manager" of the shell laboratory.
  - Despite the location of the actual testing, the local "shell" laboratory bills Medicare directly for these tests.
- In the case of a shell DME joint venture, for example:
  - It owns very little of the DME or other capital equipment; rather the ongoing entity owns them.
  - The ongoing entity is responsible for all day-to-day operations of the joint venture, such as delivery of the DME and billing.

Financing and Profit Distributions

- The amount of capital invested by the physician may be disproportionately small and the returns on investment may be disproportionately large when compared to a typical investment in a new business enterprise.
- Physician investors may invest only a nominal amount, such as, $500 to $1500.
- Physician investors may be permitted to "borrow" the amount of the "investment" from the entity, and pay it back through deductions from profit distributions, thus eliminating even the need to contribute cash to the partnership.
- Investors may be paid extraordinary returns on the investment in comparison with the risk involved, often well over 50 to 100 percent per year.

What To Do If You Have Information On A Joint Venture That Fits These Features

If you have information on the existence of a joint venture that contains some or all of the features described above, contact the Inspector General Hotline or any of the regional offices of the Office of Inspector General of the Department of Health and Human Services at the following locations:

Regions	States Serviced	Telephone
Boston	MA,VT,NH, ME,RI,CT	(617) 565-2660
New York	NY,NJ,PR,VI	(212) 264-1691
Philadelphia	PA,MD,DE, WV,VA	(215) 596-6796
Atlanta	KY,GA,NC,SC, FL,TN,AL,MS	(404) 331-2131
Chicago	IL,MN,WI,MI, IN,OH	(312) 353-2740
Dallas	TX,NM,OK, AR,LA	(214) 767-8406
Kansas City	MO,KS	(816) 426-3811
Denver	CO,UT,WY, MT,ND,SD IA,NE.	(303) 844-5621
San Francisco	CA,NV,AZ,HI	(415) 556-7747
Seattle	WA,OR,ID,AK	(206) 442-0229
Washington, DC	DC & Metrop. area of VA,MD	(202) 472-7900

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MISMANAGEMENT

To The

INSPECTOR GENERAL HOTLINE

- Operated 24 hours each day
- All callers and writers may remain anonymous
- Identities of all callers or writers are protected by Federal law
- Regional callers or writers may contact any one of eleven (11) regional offices listed in this leaflet
- To report suspected problems, please call or write:

HHS OIG HOTLINE
Department of Health & Human Services
Post Office Box 17303
Baltimore, Maryland 21203-7303
(301) 965-5953 (Commercial)
625-5953 (FTS)
(800) 368-5779 (Toll Free Nationwide)
(800) 638-3986 (Toll Free Maryland Only)

OIG-89-04

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Office of Inspector General
330 Independence Avenue, SW.
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